

Editor's Note: Reconsideration denied by Order dated April 20, 1999, Director OHA assumed jurisdiction, decision vacated by Order dated Nov. 19, 2002. See 22 OHA 119 (2002).

JOHN D. BERNT

IBLA 96-461

Decided March 1, 1999

Appeal from a Decision of the Nevada State Office, Bureau of Land Management, declaring five lode mining claims null and void ab initio in their entirety. N MC-732956 through N MC-732960.

Affirmed in part; reversed in part.

1. Exchanges of Land: Forest Exchanges--Federal Land Policy and Management Act of 1976: Exchanges--Mining Claims: Lands Subject To--Mining Claims: Lode Claims

BLM properly declares a lode mining claim null and void ab initio in its entirety if, at the time of location, the land encompassed by the claim was either segregated from mineral entry by notation on the public land records of the filing of a proposed land exchange, or already patented with no reservation of minerals to the United States.

APPEARANCES: Stewart R. Wilson, Esq., Elko, Nevada, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

John D. Bernt has appealed from a May 24, 1996, Decision of the Nevada State Office, Bureau of Land Management (BLM), declaring the Hidden Treasure, Kookaburra, Ida, Ora, and Gray Rock lode mining claims, N MC-732956 through N MC-732960, null and void ab initio in their entirety because they were located on Federal lands which were, at the time of location, either segregated from mineral entry by a November 27, 1995, notation on the public land records of the filing of a proposed land exchange, or already patented with no reservation of minerals to the United States. By Order dated July 30, 1996, the Board granted Bernt's request to stay the effect of BLM's Decision.

Bernt originally located the five claims on January 3 and 10, 1996, and filed copies of certificates of location for recordation with BLM on February 6, 1996. According to the descriptions on the location certificates and an attached map, the five contiguous claims are generally

situated in the S½ of secs. 15 and 16 and the N½ of secs. 21 and 22, T. 46 N., R. 58 E., Mount Diablo Meridian, Elko County, Nevada. All of this land is within the Humboldt National Forest, which is under the surface management jurisdiction of the Forest Service, U.S. Department of Agriculture.

In his Statement of Reasons (SOR), Bernt admits that each of the five mining claims at issue here encompassed lands which had already been patented by the United States under several mineral patents, with no reservation of minerals to the United States, and that, to this extent, the lands were not available for entry under the general mining laws at the time of location. Nor does he dispute the fact that the notation on the public land records of the filing of a Forest exchange application segregates the affected lands from mineral entry. Rather, Bernt argues that the filing of the exchange application was not noted on the public land records at the time he located his claims.

In an October 14, 1996, affidavit attached to his SOR, Bernt avers that after physically locating his claims on the ground on January 3 and January 10, 1996, but before completing the location process, he called the Forest Service on January 12, 1996, and was informed by a Forest Service employee that the lands encompassed by his claims were not segregated or otherwise unavailable for mineral entry. Bernt states that the employee later informed him on January 22, 1996, that there was a segregation effective on January 19, 1996. In addition, Bernt reports that his April 17, 1996, review of the Master Title Plat (MTP) and Historical Index (HI) at the BLM office in Elko, Nevada, revealed that the lands were subject to Forest exchange application (No. N-60556), which segregated the lands effective January 19, 1996.

Thus, Bernt argues that because the lands were not segregated from mineral entry until after he located his claims on January 3 and 10, 1996, his claims constituted "valid existing rights," under 43 C.F.R. § 2202.1(b), and were excepted from the segregation.

[1] Section 3(a) of the Federal Land Exchange Facilitation Act of 1988 (FLEFA), 43 U.S.C. § 1716 (i) (1) provides in relevant part:

Upon receipt of an offer to exchange lands or interests in lands pursuant to this Act or other applicable laws, at the request of the head of the department or agency having jurisdiction over the lands involved, the Secretary of the Interior may temporarily segregate the Federal lands under consideration for exchange from appropriation under the mining laws. Such temporary segregation may only be made for a period not to exceed five years. Upon a decision not to proceed with the exchange or the deletion of any particular parcel from the exchange offer, the Federal lands involved or deleted shall be

promptly restored to their former status under the mining laws. Any segregation pursuant to this paragraph shall be subject to valid existing rights as of the date of such segregation.

In implementing regulations, the Department has provided in 43 C.F.R. § 2202.1(b) that, in the case of National Forest System lands, such segregation shall be effected, subject to valid existing rights, by a "notation on the public land records." Thus, when BLM has noted on the public land records that National Forest System lands are subject to the filing of a Forest exchange application, those lands are segregated from entry under the general mining laws. Washington Prospectors Mining Association, 136 IBLA 128, 129-30 (1996).

The record in this case contains a copy of a "MTP SUPPL[EMENT] Sec. 15, 16, 21, 22," for T. 46 N., R. 58 E., Mount Diablo Meridian, Elko County, Nevada, on which BLM plotted Bernt's five claims in relation to the lines of the United States rectangular survey system. Bernt does not dispute BLM's placement of the claims. The MTP Supplement, last dated November 27, 1995, shows the lands in lots 11 and 12, sec. 16, lot 1, sec. 21, and lot 4, sec. 22 to be encompassed by Forest Exchange Application No. N-60464. The record also contains a copy of a November 15, 1995, letter from the Lands Adjustment Officer, Recreation and Lands, Intermountain Region, Forest Service, which informed BLM that the Forest Service had received a land exchange offer from Robert H. Ruggeri and others. The letter further notes that the exchange proponents seek to exchange certain private lands for various Federal lands, including lots 11 and 12, sec. 16, lot 1, sec. 21, and lot 4, sec. 22, of the subject township. It next states: "Please segregate the lands pursuant to Section 3 of FLEFA, 43 U.S.C. Sec. 1716([i]) (1), assign a serial number to the case, and inform us as to the status of the lands." (Letter of Nov. 15, 1995, at 2.) The Forest Service letter was date-stamped as received by BLM on November 20, 1995.

BLM assigned serial number No. N-60464 to the Forest exchange application by Ruggeri and others, as evidenced by a copy of the case abstract for that application which we have obtained from BLM. In addition, BLM noted the filing of that application on its applicable MTP Supplement, and has provided us with a copy of the MTP showing this notation. We have also obtained a copy of the HI for the township, which noted the filing of the application on November 27, 1995. Further, at the bottom of the Forest Service's November 15, 1995, letter, there is an imprinted stamp, presumably applied by BLM, which refers to "Records Posted." Opposite the entries for MTP and HI is the date "11-27-95," with handwritten initials following the MTP entry. The fact that the records were noted November 27, 1995, is also reflected on the case abstract for application No. N-60464.

It is clear that the references on the MTP and HI to Forest exchange application No. N-60556, first observed by Bernt on April 17, 1996, were in error, since there is undisputed evidence that no second application was

ever filed. Rather, as BLM informed Bernt in a July 11, 1996, letter, the second serial number was erroneously assigned to the original land exchange offer:

During January 1996, a copy of the original segregation letter was sent to [BLM's State Office]. Based on this copy, a second file was created and assigned serial number N-60556. The records for the same lands were noted and segregated again. During March 1996, it was discovered that the same lands had been segregated twice for the same exchange proposal. We then removed the notation for case file N-60556 from the records. There are no documents associated with case file N-60556. All documents pertaining to this exchange proposal are contained in case file N-60464.

BLM's error, while unfortunate, does not operate to change the fact that, at the time Bernt located his claims, there existed an MTP Supplement showing the correct notation of the filing of Forest Exchange Application No. N-60464 on November 27, 1995. Moreover, Bernt's reliance on BLM's error cannot operate to grant him a right not authorized by law. See 43 C.F.R. § 1810.3(c). Therefore, we conclude that the notation of the proposed land exchange resulted in the segregation of the lands from mineral entry effective November 27, 1995, and was in effect at the time Bernt located his claims.

As to those mining claims located by Bernt on patented lands, the MTP Supplement depicts the boundaries of mineral entry patents in relation to his claims and shows that each of these claims covers, to some extent, patented lands. With the exception of the Hidden Treasure claim, the remainder of the lands within the boundaries of each claim not subject to the Forest exchange application is shown to be patented.

In the case of the Hidden Treasure claim, about one-third of the claim covers a portion of lot 4, sec. 15, T. 46 N., R. 58 E., Mount Diablo Meridian, Elko County, Nevada, which is neither subject to the Forest exchange application nor patented. Thus, the record establishes that a portion of the Hidden Treasure claim, which apparently contains the discovery point, was not, at the time of location, segregated from mineral entry by notation on the public land records of the filing of Forest exchange application No. N-60464, patented, or otherwise not open to location under the general mining laws.

Therefore, we conclude to the extent BLM's May 1996 Decision declared the Hidden Treasure lode mining claim, N MC-732956, null and void ab initio in its entirety, that part of the Decision must be reversed; to the extent such Decision declared the Kookaburra, Ida, Ora, and Gray Rock lode mining claims, N MC-732957 through N MC-732960, null and void ab initio, that part of the Decision must be affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed in part and reversed in part.

John H. Kelly
Administrative Judge

I concur:

James L. Burski
Administrative Judge

